HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.1083 of 2006

Between:

Manyala Ramulu and others. …Appellants

And

Assistant Commissioner, Endowments Department, Visakhapatnam and another. … Respondents

:: J U D G M E N T ::

Counsel for the appellants : Sri K.V. Subrahmanya Narasu

Counsel for respondent No.1 : Government Pleader for Endowments

Counsel for respondent No.2 : Sri N. Gurugopal

24th April, 2007

Per G.S. Singhvi, C.J.

After having agreed to continue as tenants of agricultural land ranging from 0.31 cents to Ac.1.96 cents comprised in Survey No.82/1 situated at Nerellavalasa Village belonging to Sri Langurkhana Choultry of Bheemunipatnam Mandal, Visakhapatnam District for a fixed period of three years, the appellants filed Writ Petition No.14088 of 2006 for partially quashing order dated 6-1-2004 passed by Assistant Commissioner, Endowments Department, Visakhapatnam (respondent No.1), but could not persuade the learned Single Judge to entertain their prayer. This is the reason why they have filed appeal under Clause 15 of the Letters Patent.

We have heard learned counsel for the parties and perused the record. Ground No.2 of the Memorandum of Appeal filed by the appellants reads as under:

> "2. It is respectfully submitted that the learned Single Judge ought to have noted that there is nothing on record except the observation of the Assistant Commissioner, the 1st respondent herein, in the impugned order that each of the appellants have given undertakings stating that they opted to continue as tenants for a further period of 3 years by enhancing the lease amount in accordance with the rules framed under Sec. 82 of the Act."

After taking note of the above reproduced ground and the argument of the learned counsel that respondent No.1 could not suo motu fix the period of his clients' tenancy, this Court passed order dated 26-10-2006, which reads as under:

> "Shri K.V.Subrahmanya Narasu for the appellant.
>
> Heard learned counsel for the appellants and perused the record. The issue which merits consideration in this appeal is whether without giving notice to the appellants to exercise option in terms of Form II, the Assistant Commissioner could suo motu determine their rights by declaring that they would be tenants for a fixed period of three years.
>
> Learned counsel for the appellants submitted that even though this plea was specifically raised in the writ petition and argued, the same has not been considered by the learned Single Judge and as a result, his clients have been seriously prejudiced.
>
> We are prima facie inclined to agree with the learned counsel.
>
> Notice to the respondents for November 15, 2006 to show cause as to why the appeal may not be admitted and finally disposed of.
>
> Learned Government Pleader for Endowments accepts notice on behalf of respondent No.1. Therefore, notice be issued only to respondent No.2 for November 15, 2006.
>
> Personal service is permitted."

The appeal was dismissed in default on 8-12-2006, but the

same was restored by another order dated 6-2-2007 passed in WAMP. No.2759 of 2006.

On 17-4-2007, the case was adjourned to enable the learned Government Pleader for Endowments to produce the original file containing the record relating to order dated 6-1-2004.

Today, the learned Government Pleader produced the original file. We have perused the same. The file was also made available to the learned counsel for the appellants for his perusal.

After going through the file, learned counsel for the appellants argued that the undertaking given by his clients to accept the tenancy for a period of three years cannot be treated as binding on them because they did so as per the dictates of respondent No.1. Learned counsel emphasized that the appellants are landless poor and are in possession of the land since 1972 and, therefore, there was no occasion for them to have agreed for fixed term of lease. He then argued that the appellants have been pursuing their cause with the departmental authorities and, therefore, they could not have been non-suited by the learned Single Judge on the ground of laches.

Learned Government Pleader for Endowments supported the order under challenge and argued that the learned Single Judge rightly dismissed the writ petition on the ground of delay and also on the ground that the appellants had volunteered to accept fixed term of lease.

We have thoughtfully considered the entire matter. In our opinion, the appeal is liable to be dismissed because the principal ground taken by them for questioning the order of the learned Single Judge, which prompted the Division Bench to issue notice to the respondents, is founded on a patently incorrect statement that they had not agreed to accept lease for three years. The record produced by the learned Government Pleader for Endowments clearly shows that each of the appellant had given an unequivocal undertaking to accept the lease for three years. If the appellants had not made a patently

incorrect assertion in the memorandum of appeal, the Division Bench may have summarily dismissed the appeal. However, by making misrepresentation of facts, they succeeded in securing an order of notice of motion. It must, therefore, be held that the appellants have not come to the Court with clean hands.

Sri K.V. Subrahmanya Narasu made valiant effort to convince us that the undertaking given by the appellants was not voluntary, but we are unable to accept his assertion because it is neither the pleaded case of the appellants nor any evidence has been produced by them before the Court to show that respondent No.1 had induced or coerced to give the undertaking.

We are also in agreement with the learned Single Judge that the writ petitioners (the appellants herein) are not entitled to relief because they have not explained the delay of more than two years and six months in filing the writ petition. In a matter like the present one, this long delay is fatal to the cause of the appellants.

On merits also, we are convinced that order dated 6-1-2004 passed by respondent No.1 does not suffer from any legal infirmity because the same is based on the undertaking given by the appellants that they would continue as tenants for three years.

No other point has been argued.

In the result, the appeal is dismissed.

G.S. SINGHVI, C.J.

24th April, 2007

C.V. NAGARJUNA REDDY, J.

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